

BILLIE GENE BABER and AGNES
JANET BABER,

Plaintiffs,

VS.

SHELTER MUTUAL INSURANCE
COMPANY,

Defendant.

Case Number CIV-20-384-C

MEMORANDUM OPINION AND ORDER

Plaintiffs' home was damaged by a fire on March 31, 2019. The local fire department and the Fire Marshal determined the fire was intentionally set. Defendant insured the home. On April 1, 2019, Plaintiffs made a claim on the policy for the damage caused by the fire. That claim was denied. Plaintiffs then filed the present action bringing claims for breach of contract and bad faith.

During the course of discovery, Defendant took the deposition of Plaintiff Gene Baber. During that deposition, Mr. Baber was asked: “Do you have any memory whatsoever of why, when you have everything free and clear, you would want to take a mortgage out?” (Dkt. No. 22, p. 10.) Mr. Baber answered: “Yeah, but I’m not going to discuss that.” (Id.) A discussion ensued with Mr. Baber stating that he would not disclose his reasons for taking out the mortgage. Mr. Baber even suggested that he would refuse to answer even if the Court ordered him to answer. Defendant then filed the present Motion to Compel seeking an Order directing Mr. Baber to respond to the question and

other questions regarding his reasons and thoughts in taking out the mortgage. In response to the Motion, Plaintiffs argue Defendant's questions exceed the proportionality limits of Fed. R. Civ. P. 26. According to Plaintiffs, Defendant has been given ample evidence about Plaintiffs' financial history and prior insurance claims. Plaintiffs argue the reason they elected to take out a mortgage some 14 years prior to the fire imposes a greater burden on them than any benefit to Defendant of obtaining the information.

Plaintiffs have failed to demonstrate that providing the information sought by Defendant imposes an undue burden. Defendant is not requesting that Plaintiff provide additional documents or search for more information. Rather, Defendant only seeks information that Plaintiffs remember. Additionally, because Defendant seeks information from Plaintiffs' memory, it cannot obtain that information from any other source. Given the relatively slight burden on Plaintiffs in providing the information, the Court finds the requested information is proportional to the needs of the case. Accordingly, Plaintiffs shall provide the information sought by Defendant.

The Court notes Mr. Baber's suggestion at the deposition that he may still refuse to answer even if ordered to do so by the Court. Plaintiffs are cautioned that refusal to follow an Order of the Court may subject them to sanctions, up to and including dismissal of this action.

As set forth more fully herein, Defendant Shelter Mutual Insurance Company's Motion to Compel Deposition Testimony of Billie Gene Baber (Dkt. No. 22) is GRANTED.

IT IS SO ORDERED this 24th day of June 2021.



ROBIN J. CAUTHRON
United States District Judge